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Pesticides & Toxic Substances Law News for May 16, 2018

**Bloomberg
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Highlights

LEADING THE NEWS

[Pruitt to Eventually Appear Before Senate Environment Panel, Chairman Says](#)

By Abby Smith

EPA head Scott Pruitt hasn't even gotten through his latest Hill hearing—but he may already need to start planning a return trip.

[EPA May Invite Hazard, Exposure Data on Dozens of Chemicals](#)

By Pat Rizzuto

The EPA may invite chemical manufacturers and others to submit toxicity and exposure information on dozens of chemicals already on its radar for potential scrutiny.

TODAY'S NEWS

[UK Chemical, Food Industries Worry About Post-Brexit Planning](#)

By Ali Qassim

Uncertainty about the U.K.'s future trading relationships as Brexit approaches is causing anxiety among chemical and food-based industries about how to retain customers.

MONDAY NIGHT WRAPUP

[Pruitt Adds New EPA Office to Further Efficiency Effort](#)

By Abby Smith

EPA head Scott Pruitt's efficiency push throughout the agency will get its own office, the administrator announced May 14.

[House Panel Refutes Trump, Proposes \\$12M for Chemical Board](#)

By Bruce Rolfson

The Trump administration's proposal to disband the Chemical Safety and Hazard Investigation Board is once again running into opposition from Congress.



Redefining EPA

Overhauling an agency and its mission

<https://insideepa.com/agency-at-a-crossroads>

TSCA Tracker

<http://insideepa.com/specials/tsca-tracker>

Latest News

[Top Advisors Pan Pruitt's Science Transparency Rule, Seek SAB Review](#)

Top EPA science advisors, including Administrator Scott Pruitt's hand-picked chair of the agency's Science Advisory Board (SAB), are strongly criticizing the administrator's controversial plan to require only publicly available research to justify its regulations, charging it will undermine rules' integrity and was developed without adequate review.

Facing Hill Pressure, ATSDR Plans Release Of Draft PFAS Risk Levels

Facing bipartisan pressure from Congress, the federal health agency that the White House blocked from releasing draft risk values for four perfluorinated chemicals because they were stricter than EPA levels says it is now preparing to issue the chemical profiles for public comment.

Daily Feed

Ewire: Pruitt got 24-hour protection due to controversial policies

In today's Ewire: A Trump administration official sought 24-hour protection for Scott Pruitt from Day 1 because of fears his policies would "stir up the hornet's nest."



EPA

Pruitt's 24/7 security followed fear of 'hornet's nest'

[Kevin Bogardus](#), E&E News reporter



Published: Tuesday, May 15, 2018

EPA Administrator Scott Pruitt leaves a press conference at EPA headquarters with members of his security detail last month. *Andrew Harnik/Associated Press*

Discussions on whether to provide 24/7 security for EPA Administrator Scott Pruitt began days before his arrival at the agency.

Internal EPA emails obtained by E&E News show that in the week leading up to Pruitt's Senate confirmation in February 2017, there were concerns among agency staff and President Trump's appointees over security for the incoming EPA chief. Pruitt's around-the-clock protection has attracted scrutiny as Democrats have questioned whether the greater costs imposed on the agency are warranted.

Don Benton, a former Washington state senator and EPA's senior White House adviser who led Trump's "beachhead" team at the agency, requested in one email that Pruitt have 24/7 security as a temporary measure. He said that security stance should be evaluated after its first week.

"Also, I have requested 24/7 protection for the new administrator for the first week at least and then evaluate from there," Benton said in the Feb. 11, 2017, email. He said he favored moving with caution by asking for stepped-up security, given the potential backlash against Trump policies as well as two security incidents — one in the EPA Region 4 office, the other involving a former EPA employee threatening former Administrator Gina McCarthy.

"There will be several Executive Orders signed when he is sworn in that will likely stir the hornets [sic] nest and with the security issue in the Atlanta office last week as well as the lady who threatened former administrator McCarthy not showing up for court and at large in DC it is best to be on the safe side."

Just a few days before Benton's email, a woman walked into an EPA library in its Region 4 Atlanta office. She became disruptive, grabbed an EPA security guard's gun and fired it during a struggle before she was subdued.

The other case involved a former EPA employee, who after she was fired in 2011, began sending bizarre emails to agency staff. She was spotted outside EPA's headquarters in Washington and had made threats against McCarthy. Her case was later dismissed in November last year.

Benton has since left EPA after reported friction with Pruitt. In April last year, he was sworn in as the director of the Selective Service System and is still at that agency.

Security team doubles

Pruitt has cited threats against him as why he has needed increased security, referring to investigations by the EPA Office of Inspector General in congressional testimony last month. The IG has since sought to distance itself from those remarks, saying the watchdog office has no role in Pruitt's security decisions.

IG Arthur Elkins told senators in a [letter](#) yesterday that Pruitt's 24/7 security detail began on his first day in office.

"The decision was made by the Office of Criminal Enforcement, Forensics and Training after being informed that Mr. Pruitt requested 24/7 protection once he was confirmed as Administrator. The OIG played no role in this decision," Elkins said.

In February 2017, E&E News reported that agency officials were preparing to provide 24/7 security for Pruitt. That was a step up from prior administrators, who had door-to-door protection during the workday ([Greenwire](#), Feb. 20, 2017).

"Based on conversations with the transition team, we anticipate that Mr. Pruitt will initially request a 24/7 detail," said Henry Barnet, the director of EPA's criminal enforcement office, in a Feb. 16 email last year.

In response to the IG's letter, an EPA spokesman said the decision to give Pruitt 24/7 security was made before he arrived at the agency.

"As the report says, EPA's Office of Inspector General does not determine security assessments. EPA's Protective Service Detail handles security decisions and this particular decision was made before Administrator Pruitt arrived at EPA," EPA spokesman Jahan Wilcox said.

Other EPA emails obtained by E&E News show career officials at the agency discussing how to provide greater security for Pruitt.

"Clearly we've thought about this before. Seeing what's been done with other details when this has happened, it essentially takes about a 16 person team to pull it off. That would basically mean doubling our paper number of 8," said Eric Weese, who was then the acting EPA special agent in charge of the administrator's security detail, in a Feb. 9, 2017, email.

"The PSD payroll, etc, number from last year will simply need doubled and then the costs for government vehicle costs, initial weapons costs, etc, will need considered."

Documents obtained by E&E News under the Freedom of Information Act show that costs for Pruitt's personal security detail during his first months in office were nearly double what was spent on protection for his predecessors during the Obama administration ([Greenwire](#), July 5, 2017).

'I did not have 24/7 security' — Whitman

Weese continued on to say 24/7 security would strain EPA resources.

"If this is going to be the expectation on day one, [Criminal Investigation Division] management is going to immediately need to be brought into the conversation in order to provide the bodies needed to make this happen until new hires can be brought in. I can see this being a major disruption on Region 3 [EPA's Philadelphia office] CID assets at the onset, but there will be no other way to pull this off. We did this exact thing for Whitman in 2001," Weese said.

Christine Todd Whitman, President George W. Bush's first EPA administrator, told E&E News that she did not know what Weese was referring to.

"I don't know. I have no idea why he said that, but it might have been available if I demanded it [24/7 security]," Whitman said. "Post-9/11, it was the first time we had heightened security, but it was certainly not 24/7."

Whitman said she couldn't speak to the threats Pruitt has faced, but security guards were not around her at all times. She said security would travel with her on out-of-town trips and may have followed behind her when going to events in Washington.

"I walked to work by myself. I did not have 24/7 security," Whitman said. "EPA is not a high-priority target. It is just not. You are not even a full Cabinet member. You are an administrator, not a secretary."

Barnet, the criminal enforcement office director, replied to Weese's email about an hour later, asking the agent to come up with an "options paper" regarding Pruitt's security. Barnet asked for cost estimates to keep security at its current level, hiring a contract detail as well as going to 24/7 protection.

"If we went to 24/7 coverage what is the FTE needed (you mention 16 FTE) and associated costs — i.e. more vehicles, higher payroll, increased travel cost, etc.," Barnet said.

The New York Times [reported](#) last month that Weese was removed from Pruitt's detail after he questioned some of the new security measures for the administrator.

Pasquale "Nino" Perrotta, another career EPA agent who replaced Weese as the head of Pruitt's detail, has since retired after his own actions have come under scrutiny. The EPA IG is reviewing agency spending on Pruitt's security and expects to release its audit this summer.

EPA

Pruitt's use of personal email appears routine in state docs

[Mike Soraghan](#), E&E News reporter Published: Tuesday, May 15, 2018



EPA Administrator Scott Pruitt routinely used a personal email address for official business as state attorney general of Oklahoma. Claudine Hellmuth/E&E News (illustration); C-SPAN (Pruitt); Pexels/Startup Stock Photos (office); Pixabay (mug/glasses)

Shortly before his confirmation as EPA administrator last year, Scott Pruitt set up a reply greeting on his personal email, scott.pruitt@me.com. From then on, he would be using it only to get emails from friends and family.

But before that, he appears to have used the personal account routinely for official business as attorney general of Oklahoma. That contradicts much of what he has told lawmakers about his use of personal email.

Records obtained by E&E News through an open records request show Pruitt used the personal account to arrange meetings, issue instructions to his aides in the attorney general's office and get information from them about court rulings. About two weeks before his confirmation hearing, he used the personal email account to instruct his top assistant to ship him state documents for his signature.

And there may be many more. Terri Watkins, spokeswoman for the Oklahoma Attorney General's Office, told E&E News many emails are exempt from disclosure under the state's Open Records Act because they involve policy or pending litigation.

An EPA spokesman for Pruitt said discussion of Pruitt's personal emails is old news.

"This has already been written numerous times and reiterates my opinion of E&E News," Jahan Wilcox said in an email response to questions. "I will find the old stories and send them to you or you can use this thing called Google, which searches websites on the internet and find it yourself."

He forwarded a link to a June 2017 *Washington Post* [story](#) focused on Pruitt's work email accounts at the attorney general's office.

E&E News received about 160 pages of records yesterday with about 60 emails as an initial response to a December 2016 email request.

The records are a small slice of about 42,000 emails from his personal accounts that Pruitt handed over last year to the state attorney general's office for review. Officials said they expect to release more in the future.

Questions about email have dogged Pruitt, his Democratic-appointed predecessors and other elected Republicans in Oklahoma. The concern is that elected officials will use secret accounts to evade attempts by the public, reporters or Congress to obtain their communications, undermining accountability.

Republicans lambasted Obama's first EPA chief, Lisa Jackson, for using an alias email address, "Richard Windsor." But she was not the first, or the last. Pruitt was assigned four separate email accounts, but EPA officials say one of them was never used. They say that all accounts are searched when a documents request includes Pruitt's emails (*E&E News PM*, April 12).

The emails obtained by E&E News this week don't include any surreptitious dealings with energy executives or obvious attempts to conceal behavior. But Pruitt has repeatedly revised his previous statements about how he handled his official communications.

In Pruitt's contentious January 2017 confirmation process, Senate Democrats grilled him on whether he'd used personal email for public business.

"I use only my official OAG email address and government issued phone to conduct official business," he said in written responses to questions.

Two weeks before, his first assistant attorney general, Cara Rodriguez, emailed him about state bond opinions that needed signing. He replied using the personal email to instruct her to ship the documents to him by FedEx.

After his confirmation hearing, emails released in a lawsuit showed that several of his official emails were copied to a personal account. His Democratic critics in the Senate pounced, demanding that he "correct the record" (*Greenwire*, May 6, 2017).

He responded with a letter stating his original response "was and remains correct" and based on the best information available at the time. But he said an

"exhaustive review" found that "a small portion" of the emails in his personal account "may relate to state business."

Any misstatement, he said, was due to having only four days to answer about 1,100 questions. Another issue, he said, was that elected leaders must be careful not to conduct political business on their state devices.

"I make my best efforts to ensure that communications related to state business are copied or otherwise provided to official state systems," he wrote.

On the emails obtained this week by E&E News, he doesn't appear to have copied his state email address when sending work-related emails from his personal account.

Pruitt's reply greeting showed up in the document release yesterday as a bounce-back on Feb. 10, seven days before he was confirmed by the Senate. The day before, Patrick Wyrick, Pruitt's solicitor general, had been nominated to the state Supreme Court. Pruitt's assistant in Oklahoma, Michelle Hale, had sent out an email saying "Farewell Patrick."

Pruitt's [reply](#) indicated that he was winding down his use of the account.

"As I move forward to the EPA, I am transitioning this email account into a receive only email address for friends and family," Pruitt wrote.

Focus on news coverage

The batch of emails released this week show Pruitt conducting routine business on the personal account. He got an update from his top lieutenant about a court ruling in 2012. Hale checked in about a state Board of Equalization meeting in 2016. And in April 2016, he even discussed a pitch on class-action suits from the law firm of Trump attorney Marc Kasowitz.

The most common topic, though, appears to be news coverage: how to get more of it, how to respond and the mundane business of scheduling interviews.

"By the way, is Karee religiously going through all media, print, video, blog or otherwise daily and capturing content for either use, response or filing?" Pruitt wrote to his communications director, Diane Clay, in October 2012, speaking of an aide.

He looped Clay into a discussion with Crystal Drwenski, a consultant who had been his first chief of staff, about pitching Stephen Moore at *The Wall Street Journal* on a story.

"Prayerfully Steve will be receptive," Pruitt wrote. "Appreciate everyone 'swinging for the fences' in behalf of federalism. It matters and is making a difference."

PEOPLE

Farenthold gets Texas port job after resigning in scandal

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Former Rep. Blake Farenthold (R-Texas) has a new gig. A month after resigning from Congress under an ethics investigation into allegations of sexual harassment, Farenthold has scored a job as a legislative liaison for the Port of Port Lavaca-Point Comfort.

Farenthold will earn \$160,000 per year at the position. He avoids the House rule prohibiting lobbying until one year after leaving office, since he will be an employee of the local government.

Farenthold previously used \$84,000 in taxpayer funds to settle a sexual harassment suit and had not repaid the money when he left Congress.

The port is a hub for chemical manufacturing, handling chemicals, petrochemicals, ore, fertilizer and other products (Haley Samsel, [Texas Tribune](#), May 14). —

NB

SCIENCE

Lead trapped in glacier tells story of Roman Empire economy

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A glacier in central Greenland is helping historians study the economic might of the Roman Empire.

Ice cores from the glacier are being used to measure ancient lead emissions generated from northern European mining. The particles were washed down in snowfall and frozen into the glacier.

Danish officials let Andrew Wilson, an archaeologist at the University of Oxford, study the section of ice corresponding to 1235 B.C. to A.D. 1257.

The results, published in the *Proceedings of the National Academy of Sciences*, show emissions rising during periods of peace during the empire, especially the Pax Romana from 27 B.C. to A.D. 180. Periods of civil war resulted in lower industrial production — as did episodes of plague.

Lead was used for making water pipes and boat hulls, and the empire extracted silver from lead ore to make the empire's coin, the denarius (Nicholas Wade,

[New York Times](#), May 14). — NB

FEDERAL AGENCIES

Trump moves to kill lawsuit over 2-for-1 order, again

[Amanda Reilly](#), E&E News reporter

Published: Tuesday, May 15, 2018

The Trump administration is once again trying to quash litigation challenging the president's executive order requiring federal agencies to scrap two regulations for every new one created.

Government attorneys at the Justice Department yesterday moved to dismiss an amended complaint filed by environmentalists, communication workers and a watchdog group.

President Trump finalized the order at issue in January 2017. Along with requiring agencies to eliminate two rules for every new one, the order established a regulatory budget for how much agencies can spend on new rules each year.

The Natural Resources Defense Council, Public Citizen and Communications Workers of America filed suit, arguing the order was illegal in part because it attempted to override laws passed by Congress that may require rulemaking.

But Judge Randolph Moss of the U.S. District Court for the District of Columbia in February dismissed the claims, finding that the groups didn't have legal standing to sue because they hadn't shown they would suffer harms from agency actions pursuant to the order ([Greenwire](#), Feb. 26).

The judge, however, gave the groups 30 days to file an amended complaint that addressed the legal standing question.

In April, the groups tried to revive the case by laying out delays in specific rules that they said were prompted by the executive order.

They pointed, for example, to the Energy Department's decision to delay certain energy efficiency rules, including for commercial water-heating equipment

([Greenwire](#), April 5).

But the administration argues in its new motion to dismiss that the groups still haven't established they have standing to bring the lawsuit.

The groups haven't demonstrated that federal agencies actually intended to issue a rule on a subject, that the rule has been delayed by the order and that the delay caused harm, according to the government motion.

"Plaintiffs continue to speculate about the potential for increased risk to their members from various regulations that may be delayed by the order," wrote the administration lawyers.

TOXICS

Kan. lawmakers impatient about cleanup progress at Army site

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Kansas lawmakers are getting impatient about the Army's slow progress cleaning up the former Sunflower ammunition plant in western Johnson County.

Developers and local officials envision the 15-square-mile site as a large mixed-use development.

But it's riddled with contamination from artillery shells, gunpowder and propellants produced there for decades beginning during World War II. The Army says part of the site could be ready as early as 2021, but the goal for the entire cleanup is 2028.

"This has drag on a very long time," Republican Sen. Jerry Moran said at a hearing last month. "The Army apparently will be at Sunflower for another decade cleaning up the site. It's just such a long haul."

Local leaders and other members of the congressional delegation have also called on the Army to speed up the process.

The site — now owned by Sunflower Redevelopment LLC — was declared excess in 1997, but the Army only took control of the languishing cleanup effort in 2015.

Tom Lederle, chief of the Army's Base Realignment and Closure Division at the Pentagon, said he recognized that 10 years is a long time for lawmakers to wait, but it's important to do the job correctly.

"There has been progress made," he said. "It's not all bad news" (Lynn Horsley, [Kansas City Star](#), May 15). — NS

EPA

Agency wins age-discrimination suit brought by ex-manager

[Amanda Reilly](#), E&E News reporter

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A former EPA manager has failed to revive a lawsuit charging he was skipped over several times for promotions in favor of younger candidates.

Federal appeals judges today found that a lower court correctly tossed out Steven Drielak's claims of age discrimination against the agency. They also rejected Drielak's arguments that EPA retaliated by reassigning four staffers under his watch.

"Drielak has shown no causal connection between the reassignment of his agents and his protected activities," Senior Judge A. Raymond Randolph of the U.S. Court of Appeals for the District of Columbia Circuit wrote in today's opinion.



Steven Drielak. Drielak and Associates Inc.

"Agents in other divisions went through similar reassignments around the same time, and the remainder of Drielak's agents were reassigned following his retirement the next year," Randolph added.

Drielak was 50 when he started working in 2003 for EPA's Office of Criminal Enforcement, Forensics and Training after nearly three decades in law enforcement. During his first seven years, he rose to become director of the agency's Homeland Security Division.

But when EPA eliminated the division in 2010, Drielak was reassigned to lead the Field Operations program. There, he directed staff who provided forensic evidence to support EPA criminal investigations, but Drielak's attorneys argued the position was an "effective demotion."

Following reassignment, Drielak applied several times to be an acting deputy director in the enforcement office, but each time the agency chose younger candidates. The agency later passed on Drielak to direct the Criminal Investigation Division.

Drielak filed suit in 2014 and left EPA in 2015 to do private consulting in criminal environmental enforcement.

The U.S. District Court for the District of Columbia Circuit, however, dismissed Drielak's case in 2016, finding he failed to report to a counselor each time he was passed over for a position. The lower court also ruled there was no connection between the reassignment of agents and Drielak's complaints about age discrimination (*E&E News PM*, Sept. 20, 2016).

The D.C. Circuit upheld the ruling in its entirety.

"Drielak's defense is in the nature of confession and avoidance," Randolph wrote, referring to the fact that Drielak conceded he did not meet a required 45-day deadline to consult with a counselor in EPA's Office of Civil Rights.

Drielak also failed to establish that he suffered an adverse employment action, Randolph said.

"We agree with the district court that these events did not cause 'objectively tangible harm' to Drielak of the sort that would render them adverse employment actions," the judge wrote.

D.C. Circuit Judges Gregory Katsas and Karen LeCraft Henderson heard the case with Randolph. All three are Republican appointees.

[Click here](#) to read the court's opinion.

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